

MINUTES OF THE REGULAR MEETING OF THE BUTTE-SILVER BOW COUNCIL OF COMMISSIONERS

AUGUST 20, 2008

The **Regular Meeting** of the Council of Commissioners was called to order Wednesday, **August 20, 2008** in the Council Chambers, Third Floor, Room 312, Courthouse Building, 155 West Granite Street, Butte, Montana by Chief Executive Paul Babb.

ROLL CALL

9 present and 3 absent. Commissioners Coleman, Fay and Shaw were excused.

PRAYER

Commissioners were led in prayer by Commissioner Fay.

APPROVAL OF THE MINUTES OF THE SPECIAL MEETINGS OF JULY 30, 2008, AUGUST 1, 2008 AND AUGUST 13, 2008

It was moved by Commissioner O'Leary, seconded by Commissioner Lee carried by a unanimous verbal vote to approve the Minutes of the Special Meetings of July 30, 2009, August 1, 2008 and August 13, 2008

ITEMS NOT ON THE AGENDA – SUSPENSION OF THE RULES

It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried with a roll call vote of 9 yeas, 0 nays and 3 absent that in accordance with the provisions of Section 6 of Rule VI of the Rules of Business of the Council of Commissioners of the City and County of Butte-Silver Bow, State of Montana, the Council hereby finds that an emergency conditions exists which requires that the Council Rules be suspended to allow Communication No. 08-597 to be added to the Agenda of the August 20, 2008 meeting of the Council.

PUBLIC COMMENT ON ANY PUBLIC MATTER NOT ON THE AGENDA

None

CHIEF EXECUTIVE'S REPORT

Chief Executive Babb called the commissioners attention to an emergency Communication from Roger Ebner on their desks tonight. There will be a groundbreaking on Friday at the TIFID for Belmont, the new trucking firm. It will be at 11AM. The United Way is having their Day of Caring which will be at Montana Tech at noon on Friday. We have received the Fox Lawson appeals. We are meeting tomorrow with the Finance and Budget office to go through those appeals and then on Friday he will be meeting with all of the department heads to go through all of the employees that put in the appeal.

Today at the Community Enrichment Meeting we are going to talk some new positions and look at the ordinance to see if there is a different way we can deal with Community Enrichment and the way that it deals with commercial businesses. We will be bringing that back to council probably for some ordinance changes.

SECTION I

INVITATION FOR BIDS

SEALED BIDS FOR THE SEACAST OF MONTANA LLC – BUTTE FACILITY, ADDITION AND BUILD-OUT OF SEACAST OF MONTANA BUILDING FOR CITY AND COUNTY OF BUTTE-SILVER BOW. (Communication No. 08-534 being held in Committee of the Whole) **Proof of publication was noted and placed on file.**

Karen Byrnes opened the following bids:

MAC Equipment, Inc.
3424 Highway 12 East
Helena, MT

Unit 2, Electrical Service	\$4,711,800.00 base bid 213,000.00
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Swank Enterprises
750 W. Reserve Drive
Kalispell, MT

Unit 2, Electrical service	\$4,770,000.00 base bid 207,000.00
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Markovich Construction & Real Estate
2827 Lexington Ave.
Butte, MT

Unit 2, Electrical Service	\$4,625,000.00 base bid 196,500.00
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Ms Byrnes asked that these bids to the TIFID Administrator and herself and the Architects and engineers working on the project to evaluate the bids.

It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to refer the bids received to the Community Development Director, the TIFID Director, the TIFID Board and the engineers for their review and report back.

SECTION II

PRESENTATION COMMUNICATION NO. 08-585

Jeff Amerman, Finance and Budget Director, requesting time on the 8/20/08 agenda to make a presentation on the FY 2008- 2009 Preliminary Budget.

Jeff Amerman, Finance and Budget Director, said they are estimating a mill value of \$4,924.00 at this time. We are projecting no tax increases. There is no increase in operating portion of the budget and no increases in staffing levels. It is essentially the same budget that was reviewed and approved last year, with several significant changes. The major changes are a 3.2% in union salaries with the exception of the firefighters and the labor increases recommended by Fox Lawson for non-union positions, including the firefighters. A \$30.00 per month benefit increase. The addition of several positions. Increases in funds to allow for higher fuel costs. In the Capital Improvements fund which has in the last years been used for replacement of police vehicles, we are now also asking for \$400,000 for elevator repairs. The plan is to fix the broken elevator and then repair the other elevator. He recommended adoption of this preliminary budget and a referral of the Communication in the budget to the Committee of the Whole for further review on August 27th. A public hearing has been scheduled for September 10th and we would adopt the final budget and pass the necessary resolutions at the full council meeting on September 17th

It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to move Communication No. 08-585 to Committee of the Whole

SECTION III

PRESENTATION COMMUNICATION NO. 08-586

Jeff Amerman, Finance and Budget Director, requesting time on the 8/20/08 agenda to make a presentation regarding the adjustment of base values in the Ramsey TIFID

Jeff Amerman, Finance and Budget Director, came to the microphone and told the council the purpose of this communication is to bring it to the attention of council. He said he wouldn’t anticipate any action on this tonight. He recommends it be referred to either Finance and Budget Committee or Committee of the Whole for further discussion.

It was moved by Commissioner O’Leary, seconded by Commissioner and carried by unanimous verbal vote to refer Communication No. 08-586 to Committee of the Whole.

SECTION IV

CONSENT AGENDA

- A.**
 - 1. COMMITTEE OF THE WHOLE MEETING REPORT
 - 2. FINANCE & BUDGET COMMITTEE MEETING REPORT
 - 3. JUDICIARY COMMITTEE MEETING REPORT
 - 4. PUBLIC WORKS COMMITTEE MEETING REPORT

5. PERSONNEL COMMITTEE MEETING REPORT

B. COMMUNICATIONS

Before entertaining a motion for approval of the consent agenda, Chief Executive Babb called for any segregations or “friendly amendments” Commissioner O’Leary had “friendly amendment” on page 4, Communication No. 08-588. He would like to change the recommendation to “concur and hold in Committee of the Whole.” He also had a “friendly amendment” on page 13 in the Judiciary Committee Report, Section II to read “to concur in designating BLDC as the lead economic development agency for Butte-Silver Bow.” Commissioner Moodry segregated under Section IV-B, Communication No. 08-569 and No. 7, Communication No. 08-571. Commissioner Frasz made a “friendly amendment to Section 4 Public Works Committee Meeting Report, Section II, at our Public Works Committee meeting previously we had placed Petition No. 08-7 as denied and placed on file inadvertently. We want to reintroduce Petition No. 08-7 for further review.

It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to approve the Consent Agenda, Section A, Items 1 through 5, Section B, Items 1 through 25 with the exception of the items segregated.

Segregations

Communication No. 08-569, Robert A. Macioroski, Director Land Office, requesting return of county property to Butte-Silver Bow and refund of money to Dan and Donna Driver.

Commissioner Moodry said he believes Mr. Macioroski sites some council business in his communication that I don’t believe to be correct on this. He sites our meeting of July 9th when we initially discussed this with the Drivers as action on it. Commissioner O’Leary agreed with Mr. Moodry

and said his recommendation stands. Commissioner Mulcahy said he hopes that Mr. Macioroski will re-do his letter and get it to Mr. and Mrs. Driver and it will reflect the facts. Chief Executive Babb informed Mr. Mulcahy that Mr. Macioroski is on and vacation and when he gets back he will have a conversation with him so that we can get this straightened out because it's something that never should have come back before council. It will be corrected. Commissioner O'Leary reminded the council that Mr. and Mrs. Driver had attended both of those meetings and they seemed to be in concurrence with all of what we discussed and the outcome.

It was moved by Commissioner Moodry that Communication No. 08-569 be placed on file. Commissioner Lee seconded the Motion and it carried with unanimous verbal vote.

Communication No. 08-571, Lee Phillips, Director Butte-Silver Bow Public Library, requesting authorization for Chief Executive to sign agreement with Johnson Controls for service for the HVAC System.

Commissioner Moodry questioned the amount for maintenance and the time frame of three years. He said he contacted our buildings manager, Mr. Melvin. He agreed that this contract need to be reviewed and cannot proceed as presented. Mr. Melvin would like to speak to that. Bill Melvin, 911 Montrose, said that on Tuesday morning, Mr. Babb, called him and asked him to review the contract. He and the two engineers from from BSB, Jim Mulcahy and Justin Miller, looked at the contract and also pulled the contract from last year. We have already set a meeting up with Johnson Controls and the Librarian and myself and the one of the engineers for tomorrow at 4PM to discuss this further. We will report back to council on our findings. He invited anyone who is interested to attend.

Commissioner Moodry then made a motion that Communication No. 08-571 be referred to our Buildings Manager and report back to Council. John Sorich seconded the motion and it carried with a unanimous verbal vote.

SECTION V COMMUNICATIONS TO BE READ AND ACTED UPON

1. 05-574 Debra D. Williams and Bob Lee, Justices of the Peace, regarding part-time clerk position in Justice Court.

Deborah Williams, 2206 Massachusetts, passed out some handouts. She told the commissioners that she and Judge Lee would formally request that the current half-time clerk position which serves both Justice Courts be made into a full-time position and the budget authority be granted by the Council for the Justice budget.

We make the same request last spring and were informed to include the position during our budgeting process for the fiscal year. The full-time position was requested in the budget that we presented. Our preliminary budget was received back from the budget office and the full-time position had been denied. She outlined the number of cases that have increased in the last year and said she expects that will continue.

It was moved by Commissioner O’Leary to refer Communication No. 08-574 to the Committee of the Whole. The motion was seconded by Commissioner Lee and carried with unanimous verbal vote.

2. 08-577 Robert Baide, requesting time on the 8/20/08 agenda to discuss recent review by the Weed Board.

Don Baide, 142 W. Aluminum, said he feel that ought to moderate the amount of the \$1,600 a day one days work. That’s very punitive. Bob Baide then came to the microphone, His address is 733 Colorado St. He told how they are trying to keep up and believe the punishment is too harsh.

John Sorich asked what the appeal process is. John Moodry, 3005 Richardson, Weed Supervisor, said the process is the appeal to the Weed Board within ten days. The other choice they have is to go to District Court after that. On August 5th the Weed Board upheld the action.

Chief Executive Babb asked Deputy County Attorney Eileen Joyce if there was any action Council could take. She replied the Council would not have any authority to overrule the Weed Board’s decision. It requires judicial review.

It was then moved by Commissioner O’Leary to place Communication No. 08-577 be placed on file. The motion was seconded by Commissioner Lee and carried by unanimous verbal vote.

3. 08-595 Ristene Hall, Consideration to run for Council District 8 while temporarily living outside the district.

Ristene Hall came to the microphone and asked permission to run for Council District No. 8 while temporarily living outside her district for 6 to 8 months.

Commissioner O’Leary said the way he interprets the Charter she does not have to ask permission to live outside her district to be a candidate, but if she wins she will have to live in her district. Chief Executive Babb asked Deputy County Attorney Joyce for an opinion. Ms. Joyce concurred with Mr. O’Leary’s interpretation of the charter, however she does not believe that Ms. Hall should be bringing this type of request to the Council. The Council is not the appropriate entity to determine whether or not there is any problem with her candidacy. If anyone challenges her candidacy that would happen in a court of law.

It was then moved by Commissioner O’Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to place Communication No. 08-595 on file.

Emergency Communication No. 08-597

Paul Babb, Chief Executive, requesting that a public hearing be scheduled for September 3, 2008 to solicit public comment on the proposed tax abatement for the Tri-City Development Tax Abatement Request for remodeling, reconstruction or expansion.

Mr. Babb said the Review Committee has passed this on with the recommendation for approval. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried with a unanimous verbal vote to schedule a public hearing for 9/3/08 and hold this communication in Committee of the Whole.**

SECTION VI

**ORDINANCES AND RESOLUTIONS –
REFERRED TO JUDICIARY**

1. COUNCIL RESOLUTION NO. 08-62

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A PARCEL OF REAL PROPERTY DESCRIBED AS TRACT G OF THE SALLE MINOR SUBDIVISION, PLAT NO. 252-A, ALSO KNOWN AS A PORTION OF THE BUFFALO LODGE (AN UNFILED PLAT), MINERAL SURVEY NO. 579 LOCATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 12, TOWNSHIP 3 NORTH, RANGE 8 WEST, P.M.M.,.

2. COUNCIL RESOLUTION NO. 08-63

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A PARCEL OF REAL PROPERTY DESCRIBED AS ALL OF BUTTE-SILVER BOW'S INTEREST IN TRACT 2, CERTIFICATE OF SURVEY NO. 869-B, ALSO KNOWN AS A PORTION OF CASH ENTRY 1098, LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 28, TOWNSHIP 3 NORTH, RANGE 7 WEST, P.M.M, OWNED BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA TO THE ADJOINING OWNER PURSUANT TO POLICIES ADOPTED BY THE COUNCIL OF COMMISSIONERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

3. COUNCIL RESOLUTION NO. 08-64

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A PARCEL OF REAL PROPERTY DESCRIBED AS THE SOUTH PORTION OF LOTS 5 AND 6 IN BLOCK 11 OF THE HOPE ADDITION AND THE SOUTH 40 OF LOTS NUMBERED 1 AND 2 IN BLOCK 1 OF THE VOLUNTEER ADDITION OWNED BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA TO THE ADJOINING OWNER PURSUANT TO POLICIES ADOPTED BY THE COUNCIL OF COMMISSIONERS' RETAINING A 10 FOOT EASEMENT FOR ROADWAY AND PROVIDING FOR AN EFFECTIVE DATE HEREIN.

SECTION VII

ORDINANCES AND RESOLUTIONS – FINAL READING

1. COUNCIL RESOLUTION NO. 08-52

A RESOLUTION VACATING, CLOSING, DISCONTINUING AND ABANDONING THAT PORTION OF IOWA AVENUE BETWEEN BLOCKS 32 AND 34 OF THE CLARK'S ADDITION TO THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PRESCRIBING THE EFFECTIVE DATE OF THIS RESOLUTION AND FINDING THE NECESSARY FACTS HEREIN. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried with a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 08-52 on final reading and passed having been deemed fully read at length.**

2. COUNCIL RESOLUTION NO. 08-53

A RESOLUTION VACATING, CLOSING, DISCONTINUING AND ABANDONING THAT PORTION OF FIFTH (5TH) STREET BETWEEN 8 AND 10 OF THE MELROSE ADDITION TO THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA; PRESCRIBING THE EFFECTIVE DATE OF THIS RESOLUTION AND FINDING THE NECESSARY FACTS HEREIN. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 08-53 on final reading and passed having been deemed fully read at length.**

3. COUNCIL RESOLUTION NO. 08-55

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A CERTAIN PARCEL OF LOCAL GOVERNMENT OWNED REAL PROPERTY LOCATED IN THE 400 BLOCK OF EAST PARK STREET, LEGALLY DESCRIBED AS LOTS 47-49 AND THE 3.5' OF LOT 50 OF THE LIZZIE LODGE, M.S. SECTION 18, TOWNSHIP 3 NORTH, RANGE 7 WEST, BUTTE-SILVER BOW, MONTANA FOR THE PURPOSE OF COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PROCEDURES OF BUTTE-SILVER BOW MUNICIPAL CODE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 08-55 on final reading and passed having been deemed fully read at length.**

4. COUNCIL RESOLUTION NO. 08-56

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A CERTAIN PARCEL OF LOCAL GOVERNMENT OWNED REAL PROPERTY KNOWN AS 715 UTAH AVENUE, LEGALLY DESCRIBED AS LOT 11, BLOCK 6 OF THE CENTRAL ADDITION FOR THE PURPOSE OF COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PROCEDURES OF BUTTE-SILVER BOW MUNICIPAL CODE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 08-56 on final reading and passed having been deemed fully read at length.**

5. COUNCIL RESOLUTION NO. 08-57

A RESOLUTION RESCINDING BUTTE-SILVER BOW COUNCIL RESOLUTION 06-04 WHICH AUTHORIZED THE SALE OF PARCEL NO. 14710000 TO ANDREW OVERBY, AND AUTHORIZING AN APPROVING THE SALE OF A CERTAIN PARCEL OF REAL PROPERTY KNOWN AS 621 W. QUARTZ STREET, AND MORE PARTICULARLY DESCRIBED AS THE 2. 17.5’ OF LOT 5, THE 3. 10.5’ OF LOT 6, BLOCK 2 OF THE PLYMOUTH LODGE FOR THE PURPOSE OF COMMUNITY DEVELOPMENT IN ACCORDANCE WITH THE PROCEDURES OF BUTTE-SILVER BOW MUNICIPAL CODE AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O’Leary, seconded by Commissioner Lee and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council resolution No. 08-57 on final reading and passed having been deemed fully read at length**

6. COUNCIL RESOLUTION NO. 08-58

A RESOLUTION CREATING SPECIAL IMPROVEMENT DISTRICT NO. 1028 FOR THE PURPOSE OF MAINTAINING AND INSTALLING AN ELECTRICAL LIGHTING SYSTEM; DESIGNATING AND DESCRIBING THE BOUNDARIES OF SAID PROPOSED SPECIAL IMPROVEMENT LIGHTING DISTRICT; STATING THE PURPOSE OF AND THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE IN SAID SPECIAL IMPROVEMENT DISTRICT; ESTIMATING THE APPROXIMATE COST OF MAINTAINING AND SUPPLYING ENERGY THEREOF FOR THE FIRST YEAR; FINDING, DETERMINING, AND DECLARING THAT SUCH PROPERTY SHOULD BE ASSESSED FOR COST THEREOF OF MAINTENANCE AND ENERGY AND EXTENDING SUCH ASSESSMENT TO BE IN SEMI-ANNUAL INSTALLMENTS AND PROVIDING FOR THE FUND UPON WHICH SAID SPECIAL IMPROVEMENT FUNDS SHALL BE DRAWN; WITHDRAWING ALL PROPERTY DESCRIBED IN EXHIBIT “A”

FROM OTHER SPECIAL IMPROVEMENT LIGHTING ASSESSMENTS AND PROVIDING FOR THE EFFECTIVE DATE HEREOF. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 05-58 on final reading and passed having been deemed fully read at length.**

7. COUNCIL RESOLUTION NO. 08-59

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A PARCEL OF REAL PROPERTY DESCRIBED AS THE CENTER PORTION OF LOTS 23 AND 24 IN BLOCK 7 OF THE NOYES AND UPTON ADDITION BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA TO THE ADJOINING OWNER PURSUANT TO POLICIES ADOPTED BY THE COUNCIL OF COMMISSIONERS; REPEALING COUNCIL RESOLUTION NO. 08-43 DATED JULY 2, 2008 AND ALL PARTS OF RESOLUTIONS IN CONFLICT HERewith AND PROVIDING FOR AN EFFECTIVE DATE HEREIN. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 08-59 on final reading and passed having been deemed fully read at length.**

8. COUNCIL RESOLUTION NO. 08-60

A RESOLUTION AUTHORIZING AND APPROVING THE SALE OF A PARCEL OF REAL PROPERTY DESCRIBED AS LOTS 5 AND 7 IN BLOCK 8 OF THE BELL OF BUTTE ADDITION BY THE CITY AND COUNTY OF BUTTE-SILVER BOW, STATE OF MONTANA TO THE ADJOINING OWNER PURSUANT TO POLICIES ADOPTED BY THE COUNCIL OF COMMISSIONERS AND PROVIDING FOR AN EFFECTIVE DATE HEREIN **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 08-60 on final reading and passed having been deemed fully read at length.**

9. COUNCIL RESOLUTION NO. 08-61

RESOLUTION RELATING TO WATER SYSTEM REVENUE REFUNDING BONDS, SERIES 2008; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF. **It was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a roll call vote of 9 yeas, 0 nays and 3 absent to place Council Resolution No. 08-61 on final reading and passed having been deemed fully read at length.**

ADJOURN

There being no further business to come before the council, it was moved by Commissioner O'Leary, seconded by Commissioner Lee and carried by a unanimous verbal vote to Rise to the Call of the Chair.

CHIEF EXECUTIVE

ATTEST:

CLERK AND RECORDER